

## **CRIMINAL PROCEDURES FOR CITIZENS**

### **Where are criminal cases prosecuted? (MAG 20)**

As a general rule, criminal cases are prosecuted where the crime occurred.

For felony offenses, it would be the county where the offense occurred. Felony offenses may originate as an arrest warrant in magistrate court, but the trial of these cases is conducted in Superior Court.

Misdemeanor offenses are also tried in the county where the offense occurred. Many of these offenses, other than traffic citations, may originate as an arrest warrant in Magistrate Court, but the trial of these cases is conducted in State Court or Superior Court.

There are some misdemeanor offenses, such as deposit account fraud, theft by shoplifting (misdemeanor), VGCSA possession of marijuana less than one ounce, minor in possession of alcohol, which may also be tried in magistrate court or municipal court, if the offense occurred within the jurisdictional boundary of a municipality. These offenses may originate as either a warrant or citation.

### **How can I apply for a criminal arrest warrant for an individuals arrest? (MAG 20)**

If you believe this is a case you can handle yourself, you would go to the respective Magistrate Court in the county where the alleged crime occurred. Therefore, if the criminal offense occurred in Walton County, you would come to the Walton County Magistrate Court. If the crime occurred in another county, you would go to that Magistrate Court.

You would fill out a criminal arrest warrant application form. There is a fee of **\$10.00** which must be paid in cash. A judge or person authorized to administer said oath will administer do so, read your application and hear your sworn testimony.

### **Under Georgia law,**

**O.C.G.A. 17-4-40 (b)**, Most civilian arrest warrant applications are set for a warrant application hearing. There are rare statutory circumstances when an immediate arrest warrant can be issued, but they are rare.

**O.C.G.A. 17-4-40. (b) (1)** If application is made for a warrant by a person other than a peace officer or law enforcement officer and the application alleges the commission of an offense against the penal laws, the judge or other officer shall schedule a warrant application hearing as provided in this subsection.

**O.C.G.A. 17-4-40. (b) (4)** At the warrant application hearing, the rules regarding admission of evidence at a commitment hearing shall apply. The person seeking the warrant shall have the customary rights of presentation of evidence and cross-examination of witnesses. The person whose arrest is sought may cross-examine the person or persons applying for the warrant and any other witnesses testifying in

support of the application at the hearing. The person whose arrest is sought may present evidence that probable cause does not exist for his or her arrest. The judge shall have the right to limit the presentation of evidence and the cross-examination of witnesses to the issue of probable cause.

**O.C.G.A. 17-4-40. (b) (5)** At the warrant application hearing, a determination shall be made whether or not probable cause exists for the issuance of a warrant for the arrest of the person whose arrest is sought. If the judge finds that probable cause exists, the warrant may issue instant.

#### **What is a warrant application hearing? (MAG 20)**

When a civilian makes a written application for the issuance of a criminal arrest warrant, a Judge makes a determination as to whether the application should be set down for a hearing. If the Judge determines that the application should be set down for a hearing, this form is filled out stating the crime alleged and setting down the time, date, and location of the hearing. The Judge delivers one copy to the applicant at the time of the application. The Clerk of Court mails one copy to the defendant at the address provided by the applicant.

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#### **How soon will a warrant application hearing be held? (MAG 20)**

In most instances, the hearing date is set for 2-3 weeks from the date of the application.

#### **How does the accused get notice of the warrant application hearing date? (MAG 20)**

The clerk of court will mail notice to the accused.

### **What if I do not know the correct address for the accused in a warrant application hearing? (MAG 20)**

First, you should use your best reasonable efforts to find the correct address. The court is required to give notice to the accused under the provisions of **O.C.G.A. 17-4-40(B)**. The longer it takes to provide the court with a proper address for the accused, the longer the case will take to be heard. Secondly, the court, may, in appropriate circumstances refer you to file your criminal case with a local police agency rather than trying to handle it yourself. Law enforcement officers are exempted by state law from the warrant application hearing statute.

However, if no one can find the proper address for the accused, it becomes very difficult for the criminal case to proceed and difficult to find and arrest the accused. Getting a correct and current address for the accused is in your best interests.

### **How can I find the correct address for the accused? (MAG 20)**

This can take a lot of work, but it is required.

- You should start with any friends or family who may have information.
- What leads do you have?
- Where does the accused work?
- If you have a good work address, this may be adequate.
- Check public records, such as criminal and civil dockets in the clerk's office.
- If you can get a landline telephone number through the local phone directory.
- There are also reverse phone directory services on the Internet. You enter a telephone number, and if the number is published, an address will be displayed. See for instance, the internet website: [www.anywho.com](http://www.anywho.com).

The law requires that the accused be given due process notice of this proceeding. The duty to provide the correct address information lies with the accuser. If a valid address cannot be provided, the case cannot be set for a hearing until a valid address is provided. If the case is set for a hearing and the mail notice is returned as undeliverable, then the case will be dismissed. The accuser can re-apply once a new valid address has been obtained and submitted to the court.

### **I am the victim, can I bring my own attorney to the warrant application hearing? (MAG 20)**

That is entirely up to you. Some persons feel more comfortable hiring their own attorney and others simply cannot afford the cost. The judge conducting the hearing will be conducting a court of inquiry. Therefore, the judge will be asking a majority of questions if you do not hire your own attorney.

If a warrant is issued at this hearing, then a formal charging document will have been filed. Thereafter, crime victims are represented by an attorney with the District Attorney's Office. However, until that charging document is filed, the District Attorney's office is present at a warrant application hearing.

**I am the victim, and I am indigent, will the court appoint an attorney to represent me? (MAG 20)**

No, under our laws *AT THIS STAGE OF THE PROCEEDINGS*, only the accused is entitled to court appointed counsel. However, you may hire your own attorney. If a warrant is issued, then the victim does not need an attorney in a criminal case because the victim will be represented by the State of Georgia. The District Attorney's office represents victims of felony offenses and Solicitor's office represents victims of misdemeanor offenses.

**I am the accused, can I apply for appointed counsel at this hearing? (MAG 20)**

Accused persons, who are indigent and are unable to afford counsel, may apply for court appointed counsel. This application must be in writing and be submitted under oath. Forms are at the Magistrate Court.

You must immediately appear before a magistrate court judge to apply for appointed counsel in order to do so before the hearing.

Hearings will not be continued for the failure to timely apply for appointed counsel or hire counsel.

**I am the victim, can I call the accused to the witness stand to testify in the warrant application hearing? (MAG 20)**

No, this is a criminal proceeding. Therefore, the accused cannot be compelled to give testimony.

While an accused in a criminal case MAY give testimony at a warrant application hearing, that will only occur after the judge has advised the accused of his/her rights connected with the hearing, including the right to remain silent.

**What rules and rights apply to the warrant applicant and the accused at a warrant application hearing? (MAG 20)**

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**Does the accused have any additional rights since this is a criminal case?** (MAG 20)

Yes, the notice of rights is both a notice and an inquiry which is conducted by the judge.

**Right to Counsel - waiver of counsel should you hire an attorney or apply for appointed counsel.**

- You have been charged with a crime for which the punishment may be 12 months or more.
- Do you understand the MAXIMUM penalty for each offense for which you are charged?
- Do you understand that you have the right to present defense to these charges? Do you know what those defenses are under the law?
- Do you understand that you have the right to present any mitigating evidence in regard to these charge?
- Do you understand that this Court strongly advises you against proceeding without an attorney?
- If you are indigent, that is you have no funds to hire an attorney and you meet the income guidelines for appointed counsel, that this Court will appoint an attorney to represent you if you wish. This attorney can be appointed before your hearing.
- This Court cannot assist you in the presentation of your case.
- Do you understand that you will be held to the same legal standards as an attorney in the presentation of your case?
- Do you understand that your failure to raise or challenge issues before this court will hurt or even foreclose issues to you in a higher court or on appeal?
- How far did you go in school? Do you have any legal training, formal or informal?
- Is your decision to represent yourself made freely and voluntarily?
- Are you representing to this Court that this decision is made knowingly and intelligently by you?

These questions should help you analyze whether you should hire an attorney or apply for appointed counsel. **Cases will not be continued because of a failure to timely hire an attorney or a failure to timely apply for appointed counsel.**

#### **ADDITIONAL RIGHTS OF PERSONS ACCUSED OF CRIMES**

The Accused has the right to remain silent and any testimony given by the Accused may be used against him or her. The Accused is under no duty to present any evidence tending to prove innocence and is not required to take the stand and testify. If the Accused elects not to testify, no inference hurtful, harmful, or adverse to the Accused shall be drawn by the magistrate, nor shall such fact be held against the Accused in any way.

**Which witnesses should I bring to the warrant application hearing? (MAG 20)**

You should bring all witnesses you wish to have testify. Generally, you cannot testify yourself about what another witness to the case saw or heard. That is "hearsay." So, bring the proper witnesses to court.

To be on the safe side, you should consider subpoenaing these witnesses. Subpoenas may be obtained in the clerk's office. They must be served by a person over the age of 18 years, not related to the case and an affidavit of service of the subpoena should be filed with the clerk at least 24 hours prior to the hearing date.

**Can I just bring the police report to show what happened? (MAG 20)**

No, the police report is "hearsay." It is not admissible.

The law permits the opposing side to cross examine and confront witnesses. No one has yet to be able to get a piece of paper to answer questions from the witness stand. Both the court and the opposing side have the right under our laws to see and hear the witness in court.

**Can I just get the witness to sign an affidavit instead of coming to court? (MAG 20)**

No, the affidavit is "hearsay." It is not admissible.

The law permits the opposing side to cross examine and confront witnesses. No one has yet to be able to get an affidavit to answer questions from the witness stand. You can't use a witnesses affidavit in place of their live testimony. Both the court and the opposing side have the right under our laws to see and hear the witness in court.